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EXAMINER

VAN DOREN, BETH

ART UNIT PAPER NUMBER

3623

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/696,465

Applicant(s)

BIRKNER ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final office action in response to the communications received 07/11/2006. Claim 7 has been canceled. Claims 1 and 14 have been amended. Claims 1-6 and 8-20 are pending in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter added by the current amendments which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Claims 1 and 14 both recite “wherein the information is transmitted in real time to the construction system to provide up-to date reporting, wherein new equipment added in the construction system is automatically displayed on the handheld computer, and wherein an electronic signature is captured and displayed in a construction system report”. However, Examiner is unable to find support for this new matter added in the current amendments in the originally presented specification. The new matter unable to be found includes real time transmission for reporting, new equipment being added to the construction system, the newly added equipment being automatically displayed on a handheld computer, or an electronic signature.

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Claims 2-6 and 8-13 depend from claim 1 and therefore contain the same deficiencies.

Further, claims 15-20 depend from claim 14 and contain the same deficiencies.

Examiner notes that on page 36 of the originally presented specification, lines 11-12, Applicant states "as illustrated and discussed in more detail in the above incorporated by reference US patent application". However, examiner is unable to find any other reference in the specification to another US patent application, nor any number of any such application. Further, this section is discussing hand writing recognition, which does not appear to convey any of real time transmission for reporting, new equipment being added to the construction system, the newly added equipment being automatically displayed on a handheld computer, or an electronic signature.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meridian Project Systems, Inc. (www.mps.com) in view of "Technical Fact Sheet on Bidcom's Internet Outsourced Service" (PR Newswire) and in further view of Smith ("Figuring profit must include equipment costs").

As per claim 1, Meridian Project Systems, Inc. teaches a construction management system, comprising:

A handheld computer adapted to collect construction data from the field, including equipment information such as summary information by company (See at least page 1, section 1-4, and page 28, sections 1 and 3, wherein a handheld computer is disclosed that allows construction data to be collected from the field. See page 1, sections 1-4, page 3, section 2, page 11, and page 15, section 5, wherein the handheld computer collects equipment type).

a planning system to track budgetary information that manages multi-year budgets (See at least page 1, sections 1-2, page 2, section 1, page 3, section 3, page 13, sections 1-3, pages 14-16, page 17, sections 1-3, page 19, and page 28, sections 1-3, wherein planning system features are disclosed that track the budget information. See also pages 30 and 31, page 32, section 1, and page 33, section 1, wherein dates for the project can be entered and multi-year projects can be planned and managed using a budget tracking system);

A design system to perform site engineering assessment (See at least page 1, sections 1-4, page 2, section 1, page 3, sections 1-5, page 13, sections 1 and 3, page 15, and page 28, sections 1-3, which includes a system for engineers and engineering site analysis);

A construction system to track material consumption and progress for each project, the construction system adapted to receive data collected from the handheld computer (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, page 4, page 13, sections 1-3, pages 14-16, page 17, sections 1-3, page 19, and page 28, sections 1-3, which discloses a construction system to track progress and material consumption to generate reports using information from the handheld computer);

wherein the information is transmitted in real time to the construction system to provide up-to date reporting, wherein new equipment added in the construction system is automatically

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displayed on the handheld computer, and wherein a signature is captured in a construction system report. (See page 1, section 2, page 2, section 3, page 19, page 20, which discloses real time collaboration between team members and up-to-the date reporting. See page 1, section 3, page 4, which discusses hand writing recognition software. Finally, see page 13, page 15, section 5, page 19, and page 28, sections 1-3, which discloses equipment information being collected via the handheld computer, and specifically user defined fields and customizing these fields. New information added into the system is displayed by the system. See page 1, page 20).

However, Meridian Project Systems, Inc., does not expressly disclose that this collected information includes type, quantity, hours in use and stand-by hours. Meridian Project Systems, Inc., further does not expressly disclose electronic signatures captured and displayed in a construction system.

“Technical Fact Sheet on Bidcom’s Internet Outsourced Service” discloses handheld devices for project management in the construction industry (See page 1, section 1) that includes team communications in real time (see page 2, section 1) and electronic signatures captured and displayed in a construction system (See page 1, sections 1-2, and page 2, section 2, which disclose digital signature technology).

However, “Technical Fact Sheet on Bidcom’s Internet Outsourced Service” does not expressly disclose collecting information includes type, quantity, hours in use and stand-by hours.

Smith discloses that equipment information includes type, quantity, hours in use and stand-by hours (See page 1, section 1, page 2, sections 1-2, page 3, sections 1-2, wherein

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equipment information including individual pieces of equipment by type being tracked per job, including in use and standby hours).

Both Meridian Project Systems, Inc. and “Technical Fact Sheet on Bidcom’s Internet Outsourced Service” disclose handheld devices used for management, communications, and report generation in the construction industry. Meridian Project Systems, Inc. discusses capturing signatures using hand writing recognition software. “Technical Fact Sheet on Bidcom’s Internet Outsourced Service” also discusses capturing signatures to create digital signatures for use in the computing world, which drastically improves the efficiency and cost of the approval and reporting process. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use hand writing recognition software to capture signatures and create electronic/digital signatures in order to improve the efficiency and cost of the approval and reporting process. See page 2, section 2, of “Technical Fact Sheet on Bidcom’s Internet Outsourced Service”.

Meridian Project Systems, Inc. and “Technical Fact Sheet on Bidcom’s Internet Outsourced Service” are combinable for the reasons set forth above. Furthermore, Meridian Project Systems, Inc. discloses collecting and reporting information about equipment used in a construction project. Smith discloses field reporting per individual machine per job including usage and standby hours. It would have been obvious to one of ordinary skill in the art at the time of the invention to include type, quantity, hours in use and stand-by hours in the information collected and transmitted by Meridian Project Systems, Inc. in order to increase the accuracy and the detail of the information collected and stored in the system. See page 1, section 2, of Meridian Project Systems, Inc. that discusses the importance of accurate and detailed

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information. See also Smith, page 3, sections 2-3, which also discusses accurately collecting job cost data and accurately allocating equipment based on reported data.

As per claim 2, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects work in progress data (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, and page 4, wherein the handheld computer is used to collect work in progress data).

As per claim 3, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects project and contract identification, inspector identification, item number, location, and one or more description of activities (See page 1, sections 1-4, page 3, sections 1-5, pages 10-12, page 13, page 14, section 1, page 15, sections 5 and 6, and page 16, which includes project and contract identification, item numbers, location, and one or descriptions).

As per claim 4, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects labor related information (See page 1, section 1-4, page 2, page 3, section 1, pages 11-12, page 13, page 15, section 6, page 16, section 1, and page 28, sections 1-3, wherein the handheld computer collects information including labor information).

As per claim 5, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects labor type, quantity, and hours (See page 1, section 1-4, page 2, page 3, section 1, page 12, page 13, page 15, section 6, page 16, section 1, and page 28, sections 1-3, wherein the handheld computer collects labor type, quantity, and hours).

As per claim 6, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects equipment information (See page 1, sections 1-4, page 3, section 2, page 13,

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page 15, section 5, and page 28, sections 1-3, which discloses equipment information being collected via the handheld computer).

As per claim 8, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects submittal information (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, page 4, page 13, page 15, and page 28, sections 1-3, which disclose the handheld computer collecting submittal information).

As per claim 9, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects weather condition, comments, and an inspector name (See page 1, section 2, page 3, sections 1-5, pages 10-12, page 13, section 3, page 16, section 2, and page 28, sections 1-3, wherein the handheld computer collects weather condition, comments, and an inspector name).

As per claim 10, Meridian Project Systems, Inc. discloses a system wherein the handheld computer sends collected information to a server (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the handheld computer uploads and downloads information to a server).

As per claim 11, Meridian Project Systems, Inc. teaches a system wherein the collected information is sent wirelessly transmitted using a handheld wireless unit (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for wireless data transmissions).

As per claim 12, Meridian Project Systems, Inc. teaches a system further comprising a modem coupled to the handheld computer, wherein the information is transmitted using a

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modem (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for transmissions using a modem).

As per claim 13, Meridian Project Systems, Inc. discloses a system further comprising a cradle coupleable to the handheld computer, the cradle gathering the collected information for transmission to a server (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for coupling for transmission).

However, Meridian Project Systems, Inc. does not expressly disclose a hot-sync cradle.

Meridian Project Systems, Inc. discloses that the handheld computer couples with another computer to download and upload collected data. HotSync is known in the art and is the registered trade name for a method of linking between a handheld computer and a more substantial computer. It would have been obvious to one of ordinary skill in the art at the time of the invention to use HotSync to transmit the information in order to more efficiently transfer information, as discussed on page 1, section 2.

As per claims 14, 15, 16, 17, and 18, claims 14, 15, 16, 17, and 18 are method version of claims 1, 2, 4, 9, and 11, respectively, and are therefore rejected using the same art and rationale as the rejections of claims 1, 2, 4, 9, and 11, respectively.

As per claim 19, Meridian Project Systems, Inc. teaches a method wherein the handheld computer collects project and contract identification, inspector identification, item number,

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location, one or more description of activities, labor type, quantity, hours, weather condition, comments, and an inspector name (See page 1, sections 1-4, page 3, sections 1-5, pages 10-12, page 13, page 14, section 1, page 15, sections 5 and 6, and page 16, which includes project and contract identification, item numbers, location, and one or descriptions. See page 1, section 2, page 3, sections 1-5, pages 10-12, page 13, section 3, page 16, section 2, and page 28, sections 1-3, wherein the handheld computer collects weather condition, comments, and an inspector name).

As per claim 20, Meridian Project Systems, Inc. teaches a method further comprising sending collected information to a server over a land-line or wireless medium (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for wireless data transmissions).

Response to Arguments

6. Applicant's arguments with regards to the 35 USC § 102 rejections based on Meridian Project Systems, Inc. (www.mps.com) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Meridian Project Systems, Inc. fails to teach or suggest (1) all the limitations of claim 1 as amended, (2) the planning system as disclosed in the specification (see arguments, page 7, lines 14-22) or tracking funding sources, the allocation of funding sources, and scheduling information, (3) maintaining data related to preliminary site feasibility studies such as estimates of costs of the project, (4) managing a multi-year capital improvement budget process for program management that requires a system to adjust projects

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based on priorities, condition assessments, and maintenance considerations, (5) a design system, as disclosed in the specification (See arguments, page 8, lines 4-12, and page 9, lines 1-6), that perform site engineering assessment, (6) a construction system, as disclosed in the specification (see arguments, page 9, lines 14-22).

In response to argument (1), Examiner points out that claim 1 was amended in the currently received communications and, therefore, new art rejections have been established above, as necessitated by amendment. Therefore, this argument has been considered but is moot in view of the new grounds of rejection.

In response to arguments (2), (3), (5), and (6), Examiner reminds the Applicant that all these arguments were presented in the Appeal Brief filed 06/14/2005 and addressed in the Examiner's Answer to this Appeal Brief. The Board of Patent Appeals and Interferences found these arguments to be persuasive and the rejections of claims 1-6 and 8-20 (which still contain the subject matter of arguments (2), (3), (5), and (6)) were affirmed by the Board of Patent Appeals and Interferences (See page 16 of the Decision dated 02/23/2006). Since these issues were already decided on by the board of appeals, the respective rejections of these claim limitations are maintained as established on the grounds of res judicata.

In response to argument (4), Examiner respectfully disagrees, as previously asserted in the response to arguments presented in the final office action dated 03/03/2004. It is again noted that the features upon which applicant relies (i.e., managing the multi-year capital improvement budget process for program management that requires a system to adjust projects based on priorities, condition assessments, and maintenance considerations) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the

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specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). Claim 1 broadly recites “a planning system to track budgetary information that manages multi-year budgets”, which was added in the amendment of the 12/27/03 communications. Claim 14 does not recite any multi-year limitations. Examiner asserts that Meridian Project Systems, Inc. does disclose this limitation, as discussed above in the new rejections necessitated by amendment, when MPS discloses controlling costs and budget tracking systems that handle quantities and times across multi-year projects, allowing the company to manage price contracts, determine net cash, forecast revenue, etc.

7. Applicant’s arguments with regards to the rejections based on Meridian Project Systems, Inc. in view of Smith (“Figuring profit must include equipment costs”) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that with regards to Meridian Project Systems, Inc. in view of Smith (7) Smith fails to teach or suggest modifying Meridian to arrive at a construction management system with a handheld computer adapted to collect construction data from the field including equipment type, quantity, hours in use, and stand by hours and (8) there is no motivation to combine the references.

In response to argument (7), Examiner respectfully disagrees. Examiner points out that the type of data (in this case equipment type, quantity, hours) collected by the handheld computer is non-functional, descriptive material since the data, regardless of type, is merely collected and is not used in any structural or functional way in the rest of the recited claim. The functionality and structural elements remain the same regardless of the specific data collected. Thus, this descriptive material will not distinguish the claimed invention from the prior art in

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terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 21 7 USPQ 401, 404 (Fed. Cir. 1983),. *In re Loery*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994),. MPEP § 2106.

Since Meridian Project Systems, Inc. discloses a handheld computer that collects data and reports information remotely for a construction project and since Smith specifically discloses collecting and reporting data from the field regarding data per individual machine per job including usage and standby hours, it would have been obvious to one of ordinary skill in the art at the time of the invention to include type, quantity, hours in use and stand-by hours in the information collected and transmitted by Meridian Project Systems, Inc. in order to increase the accuracy and the detail of the information collected and stored in the system. Motivation for why data collection is important in Meridian Project Systems is found on page 1, section 2 (specifically discussing the importance of accurate and detailed information). See also Smith, page 3, sections 2-3, which also discusses accurately collecting job cost data and accurately allocating equipment based on reported data.

In response to argument (8), In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Meridian Project Systems, Inc. and Smith disclose collecting data in the field concerning a construction project for reporting purposes, the accuracy of the collected data being important to the management of the project. See Meridian

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Project Systems, at least page 1, section 2, and Smith, page 3, sections 2-3. Therefore, there is motivation to include collecting the data type of equipment type, quantity, and hours (taught by Smith) in the construction management system of Meridian Project Systems, Inc. since Meridian Project Systems, Inc. already teaches a system that is functionally capable of collecting many types of construction data from the field.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

“Joint Venture Unveils Smart Permit System” (Business Wire) discloses wireless handheld devices for inspectors in the construction industry that are capable of accepting electronic/digital signatures.

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"PenOp Adds Biometric Handwritten Signatures to Microsoft Windows Ce Platform"

(Business Wire) discloses handheld devices that recognize digital signatures in the construction industry.

Screenshots of Bid.com (Bid.com) discloses an on-line project management system for the construction industry that allows remote, real-time delivery of construction information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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September 5, 2006

Romain Jeanty
Primary Examiner
Art Unit 3623